IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1521 OF 2005

Shri Dattatray Bhagvan Mayekar & Ors. ...Petitioners
V/s.
Shri Saba Vasudev Rawool & Ors. ...Respondents

Shri A.G. Kundekar for the Petitioners.
Shri Sudhir Prabhu for Respondent No.1.
Shri M.D. Parab for Respondent Nos.2a to 2d.

CORAM : V.M. KANADE, J.

DATED : MARCH 6, 2007

P.C. :-

1. Rule. Rule made returnable forthwith. By consent of the parties, matter is taken up for final hearing.

2. Heard the learned Counsel for the petitioners and the learned Counsel for the respondents.

3. The petitioners take exception to the order passed by the Sub-Divisional officer, Sawantwadi dated 7th July, 2001 which was confirmed by the Additional Collector, Sindhudurg, in RTS Appeal No.57/2001 by order dated 12th March, 2003 and it was further confirmed by the Additional Commissioner, Kokan Division, Mumbai, in Revision No. 81/2004. The respondents challenged the

mutation entry No.5840 whereby the name of the respondent was deleted and the name of the petitioners therein was entered in the revenue records. The SDO, Sawantwadi allowed the appeal filed by the respondent and this order was confirmed by the Additional Collector and thereafter, by the Additional Commissioner. All the three authorities have made an observation that mutation entry no.5840 was entered in the revenue records on the basis of an order passed by the Additional Tahasildar in tenancy case no.2691. The concurrent finding has been given that the said tenancy case no.2691 was in respect of a tenancy of one Vasu Bhagwan Chipkar who had nothing to do with the present land in question. All the authorities have, therefore, observed that the said entry was nullity since it was made on the basis of ALT decision in which the subject matter of the land in question was altogether different.

4. The learned Counsel for the petitioners has submitted that there was delay in filing the RTS appeal by the respondent and on the ground of delay itself, the appeal was liable to be dismissed. He further submitted

that Additional Commissioner has erred in observing that no notice was given to the respondents before making a change in the record of rights. He submitted that therefore, the order was liable to be set aside.

5. I am unable to accept the submission made by the learned Counsel for the petitioners. Since mutation entry has been made on the basis of the decision in tenancy case no.2691 which according to the record clearly pertains to some other land. Obviously, such a change could not have been effected. The said entry, therefore, was obviously a nullity.

6. Writ Petition, therefore, is dismissed. It is always open for the petitioners to establish their right by taking out appropriate proceedings before the appropriate forum. The learned Counsel for the respondents states that the petitioners have already filed a suit to the civil court.

. Rule is discharged. There shall be no order as to costs.

(V.M. Kanade, J.)